

THE HONOURABLE MR JUSTICE M.S.RAMACHANDRA RAO

C.R.P.No.1174 of 2015

-

ORDER

This Revision is filed under Article 227 of the Constitution of India challenging the order dated 08.12.2014 in I.A.No.505 of 2014 in O.S.No.729 of 2008 on the file of XIII Additional District Judge, Ranga Reddy District at L.B.Nagar.

2. Petitioner herein is the 8th defendant in the suit. The suit was filed by the 1st respondent herein for partition and separate possession of the plaint schedule properties.

3 . The 8th defendant filed a written statement on 13.03.2013. In paragraph No.5 of the written statement, he stated that the plaint schedule property is joint Hindu family property.

4. Subsequently, he sought to amend the written statement by filing I.A.No.505 of 2014 taking the plea that the words 'is denied' after the words 'joint Hindu family property' were omitted on account of typographical error. He also contended that the rest of the pleadings in the written statement also indicate that there was no admission that the property was joint family property.

5. This was opposed by the 1st respondent.

6. By order dated 08.12.2014, the said I.A. was dismissed. It held that the proposed amendment changes the basic defence and therefore, ought not to be entertained.

7. Questioning the same, this Civil Revision Petition is filed.

8. Learned counsel for the petitioner would contend that the order passed by the Court below is erroneous and that there was a typographical mistake as the words 'is denied' were not typed by

mistake in the first line of paragraph No.5 of the written statement. He further contended that the amendment is only clarificatory in nature and ought to be allowed.

9. In **Heeralal v. Kalyan Mal**, the Supreme Court considered a case where a definite stand was taken in the written statement by the defendants that the plaintiff had a share in seven out of the ten scheduled properties as they belonged to the plaintiff and defendants 1 and 2 as joint family properties. Subsequently, the defendants moved an application for amendment of the written statement, which was not allowed by the trial Court. The Supreme Court held that the defendants cannot be allowed to withdraw from the admissions made in the written statement originally filed by them.

10. The said principle was reiterated in **Usha Balashaheb Swami v. Kiran Appaso Swami** case. The Court, however, clarified that as long as the admission is not withdrawn, but it is sought to be explained, it can be done by seeking amendment by adding a rider /proviso thereto.

11. In the present case, the petitioner wishes to withdraw the admission made in paragraph No.5 of the Written Statement. It is not a case of adding a condition or proviso thereto, but it is a case of attempt to withdraw the admission. This is impermissible as per the above decisions. So I am of the opinion that the Court below has rightly dismissed I.A.No.505 of 2014 seeking amendment of the written statement.

12. Therefore, I do not find any merit in the Civil Revision Petition and it is, accordingly, dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this civil revision petition shall stand dismissed.

M.S.RAMACHANDRA RAO, J

5th June, 2015

sj